

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Annual Assessment of the Status of ) CS Docket No. 99-230  
Competition in Markets for the )  
Delivery of Video Programming )

To: The Commission

**REPLY COMMENTS OF THE  
NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE**

The National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Reply Comments in connection to the Notice of Inquiry ("NOI") issued by the Commission in the above-captioned proceeding on June 23, 1999.<sup>1/</sup> As discussed in NRTC's Comments, rural America's ability to access multichannel video programming by satellite is jeopardized not only by shortfalls in the copyright and communications laws, but by the unwillingness of DIRECTV to meet its contractual obligations to NRTC. In light of recent developments in its contractual dispute with DIRECTV, NRTC's ability to provide multichannel video programming distribution ("MVPD") services to rural Americans at competitive rates and on fair terms and conditions is further compromised.

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<sup>1/</sup> 64 Fed. Reg. 36013.

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**I. DIRECTV Is Making DBS Programming More Costly for Rural America.**

1. In its Comments, NRTC brought to the attention of the Commission a pending lawsuit by NRTC against DIRECTV regarding certain actions by DIRECTV which jeopardize the level and diversity of video programming services available through NRTC in rural America. On June 3, 1999, NRTC filed suit in the United States District Court for the Central District of California alleging, among other things, that DIRECTV has wrongfully refused to allow NRTC to distribute HBO, Showtime, The Movie Channel, and Cinemax (the "Premium Programming") in NRTC's service territory under a DBS Distribution Agreement with DIRECTV.<sup>2/</sup> NRTC voiced its concern that without access to this "marquee" programming, the ability of NRTC, its members and affiliates to provide a competitive package of programming to rural America is severely undercut.

2. Since its August 6, 1999 Comments in this proceeding, NRTC has been forced to file yet another lawsuit against DIRECTV to protect the rural consumers served by NRTC's members and affiliates. On August 26, 1999, NRTC filed a second breach of contract lawsuit in the United States District Court for the Central District of California,

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<sup>2/</sup> Complaint for Breach of Contract and Declaratory Relief, National Rural Telecommunications Cooperative v. DIRECTV, Inc.; Hughes Communications Galaxy Inc.; and DOES 1-10 (C.D. Cal.) (No. CB 99-5666 LGB CWX).

alleging that DIRECTV unlawfully withheld from NRTC tens of millions of dollars in launch fees and programming discounts.<sup>3/</sup>

3. NRTC reluctantly filed the second suit after DIRECTV repeatedly refused to abide by its contractual obligation to share with NRTC its proportionate share of financial benefits received when DIRECTV entered into distribution contracts with various television programmers for carriage on the DIRECTV platform. These benefits include, but are not limited to: discounts, volume price breaks and other financial benefits based on subscriber count and growth; advertising allowances and revenues relating to the distribution of programming and advertising; cost savings for shared use of satellites, transmission and other facilities; and channel launch fees, which are in essence, payment or credits that programmers and other service providers pay DIRECTV for carriage.

4. More than 22 percent of the current DIRECTV subscriber base resides in NRTC territories and is served by an NRTC member or affiliate. DIRECTV is contractually obligated to share with NRTC a proportionate share of these monies based on NRTC's percentage of the total DIRECTV subscriber base.

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<sup>3/</sup> See "NRTC Files Lawsuit Against DIRECTV to Protect Rural Consumers," NRTC Press Release, August 26, 1999. Attached as "Attachment A."

5. Without receiving the financial benefits due under its contract with DIRECTV, NRTC is unable to pass program cost savings to its members and affiliates and to rural consumers. As a result, NRTC -- and rural America -- are at a competitive disadvantage. Although the Commission typically does not address private contract issues, NRTC's lawsuit against DIRECTV warrants the Commission's continued attention due to its impact on the availability and cost of programming to rural America.

## **II. The Commission Should Ensure That All Americans May Receive Distant or Local Broadcasting Signals by Satellite.**

6. NRTC's ability to provide rural Americans with the same type of programming available in larger urban markets is further limited by restrictions on the retransmission of distant and local broadcast signals by satellite. NRTC noted in its Comments that the Commission's Grade B proceeding -- initiated at NRTC's request -- provided practically no relief to the millions of households that have lost or will lose distant network signals as a result of a Florida District Court's injunction and the ensuing agreement between the broadcasters and some DBS companies.<sup>4/</sup>

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<sup>4/</sup> The Commission's Grade B Order did not address the fundamental problem surrounding the SHVA's distant network retransmission restriction which Congress left for the Commission to address -- the definition of a "Grade B" signal for purposes of the SHVA. Accordingly, NRTC has urged the Commission to reconsider its Grade B Order and to use its ample statutory authority to establish new Grade B signal strength values specifically for purposes of the SHVA that more accurately reflect signal strength actually required to receive an acceptable over-the-air picture. NRTC also urged the Commission to adopt new prediction models and measurement techniques that will determine more accurately which households can receive a Grade B signal from the local

(continued...)

7. Local-to-local satellite service will not be an option for most rural consumers who have already lost or will lose distant network signals. DIRECTV and EchoStar have made it clear that they will only offer local network signals in major metropolitan areas. DIRECTV announced plans for delivery of local broadcast network channels by satellite to approximately 50 million homes in the major metropolitan markets across the United States.<sup>5/</sup> EchoStar announced similar plans to offer local-to-local satellite service to nearly 50% of the U.S. population.<sup>6/</sup>

8. According to Nielsen data, there are 98 million total U.S. television households and approximately half of those homes, 48.8 million, are located in the 25 largest television markets. There are 210 Designated Market Areas ("DMAs") throughout the United States. However, the DBS licensees apparently plan to offer local

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<sup>4/</sup> (...continued)  
network affiliate.

<sup>5/</sup> "DIRECTV to Offer Local Broadcast Network Channels," DIRECTV News Release, May 5, 1999. Available at "<http://www.directv.com/press/pressdel/0,1112,4,00.html>".

<sup>6/</sup> David K. Moskowitz, Senior Vice President and General Counsel, Secretary and Director of EchoStar Communications, Congressional Testimony before the Courts and Intellectual Property Subcommittee of the Committee on the Judiciary, February 25, 1999. EchoStar stated that consumers in the 20 major metropolitan areas would receive local programming on one dish while consumers in smaller markets would be offered local-to-local signals through a second satellite dish. However, EchoStar did not state how many smaller markets it could serve with the second dish.

network signals only to the 25 largest DMAs. As a result, rural consumers will remain unserved by any local-to-local plan.<sup>27</sup>

9. The service plans of the DBS licensees may reflect the economic reality that the retransmission of local signals in sparsely populated markets will be less lucrative than in urban markets. As a result, local signals will be unavailable by satellite to most rural viewers. Exclusion of rural markets in DBS local-to-local plans not only will deprive rural viewers of access to local signals by satellite, but satellite as a technology will be unable to compete fully with cable offerings which include local signals in smaller markets.

### III. CONCLUSION

10. NRTC increasingly finds itself unable to provide a truly competitive MVPD service to rural America. DIRECTV's refusal to provide Premium Programming to NRTC and to share launch fees is undermining NRTC's ability to provide a diversity of programming services to rural America and adversely affecting NRTC's ability to compete with cable in providing MVPD services.

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<sup>27</sup> "Markets That Will Be Served By Local-into-Local," tvaccess.com web page <<http://www.tvaccessnow.com/>>. "tvaccessnow.com" is an NRTC sponsored web site designed to address consumers' concerns over the inability to receive network signals by satellite. The site explains the limitations of current laws and pending legislation and provides consumers a link to contact their Congressional representatives.

11. Furthermore, until the Commission resolves the distant network signal problem by adopting modern, realistic, consumer-friendly and understandable "Grade B" standards, millions of rural viewers will remain disenfranchised throughout the country. The Commission also has to take concrete steps to ensure that all Americans, not just those living in urban areas, receive the benefits of local signal retransmission by satellite once authorized by Congress. These types of regulatory and legislative developments are critical to ensure rural America's access to competitive MVPD programming services.

**Respectfully submitted,**

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**Attachment**

## ATTACHMENT A

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### FOR IMMEDIATE RELEASE

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## NRTC FILES LAWSUIT AGAINST DIRECTV TO PROTECT RURAL CUSTOMERS

***"DIRECTV 'Shell Game' With Launch Fees and Programming Discounts Is Forcing Rural Customers To Pay Higher Fees For Satellite TV Service," NRTC Contends***

**Herndon, VA, August 26, 1999** -- In its continued fight to give rural America access to high-quality TV programming at the most competitive prices, the National Rural Telecommunications Cooperative today filed a second breach of contract lawsuit against DIRECTV.

NRTC's lawsuit alleges that the nation's largest satellite television provider, which is owned by General Motors, has unlawfully withheld tens of millions of dollars in launch fees and programming discounts that has created an uneven playing field for rural distributors of the DIRECTV service to the detriment of rural consumers.

"To say we have mixed feelings about filing a lawsuit against our business partner would be putting it mildly," NRTC President and CEO Bob Phillips said. "Ultimately, we decided we simply had to take this action to serve the best interests of our rural American customers -- and in fact for all rural Americans. DIRECTV is bent on leaving rural America behind with non-competitive prices."

At issue is DIRECTV's refusal to fairly share the financial benefits the company reaps when it enters into distribution contracts with various television programmers for carriage of the programmers' services on the DIRECTV platform.

These monies include, but are not limited to: discounts, volume price breaks and other financial benefits based on subscriber count and growth; advertising allowances and revenues relating to the distribution of programming and advertising; cost savings for shared use of satellites, transmission and other facilities; and channel launch fees, which are in essence, payments or credits that TV or cable programming services pay DIRECTV for carriage.

DIRECTV is contractually obligated to share with NRTC its proportionate share of these monies, based on the cooperative's percentage of the total DIRECTV subscriber base. More than 22 percent of the current DIRECTV subscriber base resides in NRTC territories and is served by an NRTC member or affiliate.

This money is used by NRTC's members and affiliates to support promotions and other marketing activities and to help defray operating costs -- all of which keep prices fair for rural consumers. DIRECTV -- and other television providers -- use the money for the same purpose in the markets they serve.

DIRECTV's "shell game" with NRTC regarding fair distribution of this money has put the cooperative, and its members and affiliates, at a competitive disadvantage - compared to DIRECTV, other satellite providers and cable - when it comes to distribution of television services in rural America.

"While this suit is nominally about DIRECTV breaking the spirit and letter of its agreement with NRTC, it is also about DIRECTV breaking a covenant with rural Americans, through NRTC, to provide them with the same quality service and fair prices enjoyed by customers in urban markets," Phillips said. "Frankly, we are shocked and saddened that DIRECTV has such little regard for contracts. Legally and morally they are on distressingly weak ground."

NRTC's relationship with DIRECTV is based upon an agreement NRTC entered into with Hughes Communications Galaxy Inc., DIRECTV's predecessor, in 1992. NRTC members and affiliates invested more than \$100 million to capitalize the launch of DIRECTV's business and, in return, received DIRECTV programming rights in rural America. Now NRTC, through its members and affiliates, provides DIRECTV services to more than 1.2 million rural families.

"Our contract is very clear on these issues," said Phillips. "While DIRECTV used to pay us at least a portion of our share of these financial benefits, it is now ignoring its responsibilities. Newer agreements related to these benefits have been crafted by DIRECTV to allow them to play a shell game of 'now you see it, now you don't.' The ultimate loser is the rural customer. It strikes us as particularly ironic that DIRECTV, a champion with NRTC in supporting the program access law, is thwarting the intent of Congress by denying fair pricing to rural consumers.

"It is unfortunate that we have to take this action," Phillips said. "NRTC members and affiliates have played a major role in developing the DIRECTV project since the very beginning. Today, we represent a major segment of DIRECTV's high-power DBS subscriber base. We cannot, however, stand by and allow DIRECTV to unlawfully withhold monies and other benefits they have been granted by the programmers due, in part, to our rural subscriber base."

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*NRTC represents the advanced telecommunications and information technology interests of more than 900 rural electric and rural telephone systems. Many of its members and affiliates provide direct broadcast satellite (DBS) equipment and DIRECTV programming services to homes with small-dish satellite antennas. Members also deliver NRTC's C-band programming service.*

*Rural TV, to homes with large-dish satellite antennas. With over 1.2 million subscribers to its C-band and DBS services, NRTC is the 16th largest television programming provider in the United States, and the largest provider of satellite television to rural homes. NRTC's family of products and services includes Internet services, satellite television, power quality products and utility communications products and services.*